

08 CV 03169

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CMS Gas Transmission Company

Petitioner,

The Republic of Argentina

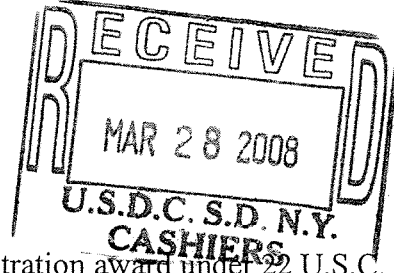
Respondent,
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Civ. _____

**PETITION TO ENFORCE
FOREIGN ARBITRAL
AWARD**

Petitioner CMS Gas Transmission Company ("CMS"), through its attorneys, hereby alleges, with knowledge as to its own acts and upon information and belief as to the acts of others, as follows:

Introduction



1. This is an action to enforce an arbitration award under 22 U.S.C.

§1650a and Article 54 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "ICSID Convention"). The arbitration award (the "Award") was rendered in Petitioner's favor against Respondent, the Republic of Argentina ("Argentina"), following an arbitration conducted in Washington, D.C., under the rules of the International Centre for the Settlement of Investment Disputes ("ICSID").

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 22 U.S.C. §1650a.

3. Venue is proper in this District under 28 U.S.C. §1391(d).

The Parties And Other Relevant Persons

4. Petitioner CMS is incorporated under the laws of the State of Michigan.

5. Respondent is Argentina.

The Arbitration

6. After more than six years of litigation, Argentina has now no further legal recourse to avoid paying US\$133.2 million, plus interest, to CMS. As of March 14, 2008, Argentina owes CMS approximately US\$168 million.

7. Such compensation stems from Argentina's breach of its obligations vis-à-vis CMS, as a U.S. protected investor in Argentina, under the bilateral investment treaty (the "BIT") between the U.S. and Argentina and the ICSID Convention.

8. Argentina itself has recognized its obligation to pay. The current Procurador del Tesoro de la Nación, Mr Osvaldo César Guglielmino, provided on behalf of the Republic of Argentina:

. . . an undertaking to CMS Gas Transportation Company that, in accordance with its obligations under the ICSID Convention, it will recognise the award rendered by the Arbitral Tribunal as binding and will enforce the pecuniary obligations imposed by that award within its territories, in the event the annulment is not granted.¹

9. The ICSID decision on the annulment challenge, of September 25, 2007, confirmed Argentina's obligation to pay the US\$133.2 million plus interest in compensation, holding that "payment by Argentina of the sum awarded is again obligatory" (thus lifting the stay of execution of the award in force during the annulment proceeding).

10. The ICSID Convention is clear that an ICSID award (not annulled in ICSID annulment proceedings, such as the award in this case) is final and binding. Complying with an ICSID award is an obligation of any ICSID member state towards its 143 fellow member states.

11. Following confirmation of the Award, Argentina has attempted to raise a number of defenses in an effort to avoid payment of the Award. Most recently Argentina has taken the position that CMS must enforce the Award in the local courts of Argentina even though the very essence of the ICSID system is to avoid the intervention of local courts. CMS believes that, by doing so, Argentina hopes to use local courts to review the final ICSID award and, at least, delay payment for several years.

¹ Republic of Argentina's Letter to the ICSID Annulment Committee, 12 June 2006.

12. In short, Argentina has exhausted all legal avenues to resist CMS's claim and its obligation to comply with the Award, and is in breach of its obligations under the US/Argentina BIT and the ICSID Convention.

Cause of Action

14. CMS repeats and realleges the allegations contained in paragraphs 1 to 12 as if fully set forth herein.

15. The United States and Argentina are signatories to the ICSID Convention. Awards issued pursuant to the ICSID Convention are automatically enforceable in the United States under 22 U.S.C. §1650a.

16. An arbitration award under the ICSID Convention has been issued in CMS's favor.

17. CMS is therefore entitled to enforcement of such arbitration award pursuant to Article 54 of the ICSID Convention and 22 U.S.C. §1650a.

Prayer for Relief

WHEREFORE, CMS respectfully asks the Court to enter judgment:

(a) Enforcing the Award of the arbitration tribunal pursuant to Article 54 of the ICSID Convention and 22 U.S.C. §1650a.

(b) Awarding CMS the sum of US\$168,373,138, plus interest from the date of March 14, 2008;

(c) Awarding CMS its costs in this action, including reasonable attorneys' fees and disbursements; and


(d) Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 27, 2008

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